

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Application of)	
)	
REGIONET WIRELESS LICENSE, LLC)	File No. 443747
)	
For Renewal of License for Station WRV374 to)	
Provide Automated Maritime Telecommunications)	
System Service to the Atlantic Coast)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: October 10, 2002

Released: October 25, 2002

By the Commission:

1. *Introduction.* We have before us an Application for Review filed on December 3, 2001, by Warren C. Havens (Havens).¹ Havens seeks review of the dismissal by the Wireless Telecommunications Bureau (Bureau), Public Safety and Private Wireless Division (Division)² of the petition for reconsideration he filed in the captioned proceeding. Havens had petitioned the Division to reconsider its grant of an application to renew the license of Regionet Wireless License, LLC (Regionet) to provide Automated Maritime Telecommunications System (AMTS) service to the Atlantic Coast under Call Sign WRV374. For the reasons that follow, the Application for Review is denied.

2. *Background.* AMTS stations provide automated, integrated, interconnected ship-to-shore communications similar to a cellular phone system for tug boats, barges, and other maritime vessels.³ For licenses issued prior to January 12, 2001, the Commission required that AMTS stations be placed in operation within eight months from the date the license was granted.⁴

¹ Havens filed an application for review and a petition for reconsideration in a single joint pleading directed to the Commission and the Bureau. Section 1.104(b) of the Commission's Rules permits the filing of "either a petition for reconsideration or an application for review (but not both)" 47 C.F.R. § 1.104(b) (2001); *see also* 47 C.F.R. § 1.44(a) (2001). Because this joint filing violates Section 1.104(b), and given that the arguments raised in the petition for reconsideration are similar in nature to the arguments raised in the application for review, we believe that it is in the public interest to treat the entire filing as an application for review. *See* William L. Leavell, *Memorandum Opinion and Order*, 15 FCC Rcd 14861, 14861 (EB 2000).

² Regionet Wireless License, LLC, *Order on Reconsideration*, 16 FCC Rcd 19375 (WTB PSPWD 2001) (*Order on Reconsideration*).

³ *See* Amendment of Parts 2 and 80 of the Commission's Rules Applicable to Automated Maritime Telecommunications Systems (AMTS), *First Report and Order*, GEN Docket No. 88-732, 6 FCC Rcd 437, 437 ¶ 3 (1991).

⁴ 47 C.F.R. § 80.49(a)(2) (2000). The construction period is now two years. *See* 47 C.F.R. § 80.49(a)(3) (2001).

3. There are twenty-seven AMTS stations authorized under Call Sign WRV374. The initial grant dates for these stations range from 1996 to 2000.⁵ On October 15, 1999, Regionet requested a one-year extension "to complete construction of the authorized facilities" associated with Call Sign WRV374.⁶ On October 28, 1999, the Division's Licensing and Technical Analysis Branch extended the construction deadline to November 30, 2000.⁷ By that date, Regionet completed construction of the sixteen stations whose grant date preceded 1999.⁸ The other eleven stations were authorized with waivers to allow a two-year construction period.⁹ All eleven stations were timely constructed.¹⁰ The information in the construction notifications Regionet subsequently filed indicates that some of the stations were constructed at different locations or with different antenna heights from what was originally authorized.¹¹

4. On May 9, 2001, Regionet's above-captioned application to renew its license for Call Sign WRV374 was accepted for filing.¹² No petitions to deny were filed. On June 26, 2001, Havens submitted to the Division a general informal request¹³ regarding Regionet's AMTS station activation letters.¹⁴ The informal request

5.

6. addressed Regionet's Atlantic Coast, Erie Canal, and Great Lakes systems, and stated that "many" of the construction notices for those systems contained "one or more" defects, including ambiguity, coordinates and/or antenna heights different from what was authorized, and untimeliness.¹⁵

⁵ Eight grants occurred on May 30, 1996; one on June 3, 1996; six on August 26, 1997; one on June 1, 1998; five on February 1, 1999; five on July 12, 1999; and one on February 10, 2000.

⁶ Regionet Wireless License, LLC, Request for Extension of Time to Construct Automated Maritime Telecommunications System WRV374 at 1.

⁷ Letter from Mary M. Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau to Fred Daniel, Regionet Wireless License, LLC (dated Oct. 28, 1999).

⁸ Havens argues that the construction notifications do not comment on whether construction was completed, but merely state that testing had commenced. Application for Review at 6.

⁹ AMTS licensees often found eight months to be insufficient to construct an entire system and therefore routinely requested additional time, up to two years. See Amendment of the Commission's Rules Concerning Maritime Communications, *Fourth Report and Order and Third Further Notice of Proposed Rule Making*, PR Docket No. 92-257, 15 FCC Rcd 22585, 22595 § 16 (2000). In view of this fact, on November 16, 2000, the Commission announced that the construction requirement would be extended from eight months to two years. *Id.* at 22595 § 17.

¹⁰ The construction of the stations authorized on February 1, 1999 was completed on January 30, 2001, except that the station at Conway, South Carolina, was constructed as of November 8, 2000. The construction of the stations authorized on July 12, 1999 was completed on June 11, 2001 and July 9, 2001. The station authorized on February 10, 2000 was constructed as of June 11, 2001.

¹¹ In the case of nine of those stations, the antenna height was raised 180-270 feet above the authorized height and in the case of four of those stations, the antenna height was lowered. Regionet also moved six of the sixteen stations to locations that were within a half-mile from the initial location of record.

¹² Wireless Telecommunications Bureau, Site-by-Site Accepted for Filing, *Public Notice*, Report No. 849 (WTB May 9, 2001).

¹³ Because the Commission's Rules do not specifically provide for filing protests of construction notices, we will treat Havens's submission as informal requests pursuant to Section 1.41 of our rules. See 47 C.F.R. § 1.41 (2001).

¹⁴ Letter via Electronic Mail from Warren Havens, President, and Jimmy Stobaugh, Operations Manager, Telesaurus Holdings GB, LLC, to Scot Stone and Kimberly Kleppinger, Federal Communications Commission (dated June 26, 2001).

¹⁵ *Id.* at 1-2.

The renewal application for Call Sign WRV374 was granted on July 2, 2001.¹⁶ The Division's Policy and Rules Branch informed Havens on July 6, 2001 that his informal request was not sufficient to form the basis for Commission action because it did not specify which Regionet facilities Havens believed were improperly constructed.¹⁷

7. On August 1, 2001, Havens filed a petition for reconsideration of this grant. In an *Order on Reconsideration*, released November 2, 2001, the Division dismissed Havens's petition for reconsideration because he lacked standing to challenge the grant of the renewal of Call Sign WRV374.¹⁸ The Division concluded that Havens was not a party to this proceeding prior to filing his reconsideration petition, and that he failed to demonstrate that it was not possible for him to participate earlier, as required of non-parties by Section 1.106(b)(1) of the Commission's Rules.¹⁹ On December 3, 2001, Havens filed the instant Application for Review.²⁰

8. *Discussion.* In addressing Havens's petition for reconsideration, the Division concluded that because Havens failed to file a valid petition to deny, he was not a party to this proceeding prior to the Branch's grant of the subject renewal application.²¹ Havens now suggests, for purposes of his Application for Review, that he became a party to the proceeding when he made an informal request regarding Regionet's AMTS station activation letters.²² As a procedural matter, Havens's argument suffers defects on two bases. First, because Havens did not make this argument in his petition for reconsideration, the Division had no opportunity to pass on the issue. Accordingly, Havens cannot now raise the issue for the first time in his Application for Review.²³ Second, our records indicate that the informal request was submitted on June 26, 2001,²⁴ which is beyond the thirty-day petition to deny filing period that commenced when the renewal application was accepted for filing on May 9, 2001. We believe that the Division correctly concluded that Havens did not file a petition to deny the license renewal application for Call Sign WRV374. Therefore, we affirm the Division's conclusion that he did not become a party to this proceeding prior to the grant of the subject renewal application.

9. Because Havens was not a party to the proceeding prior to the filing of the reconsideration petition, under the Commission's Rules, he must demonstrate 1) that his interests were adversely affected by the Commission's grant of the application, and 2) that there was good reason why it was not possible for him to participate in the earlier stages of the proceeding.²⁵ Havens states that he has an interest in this

¹⁶ Wireless Telecommunications Bureau, Site-by-Site Action, *Public Notice*, Report No. 908 (WTB July 11, 2001).

¹⁷ Electronic Mail from Scot Stone, Federal Communications Commission, to Warren Havens (July 6, 2001).

¹⁸ *Order on Reconsideration*, 16 FCC Rcd at 19376-77 ¶¶ 5-7.

¹⁹ *Id.*

²⁰ On December 17, 2001, Regionet filed an opposition. On December 28, 2001, Havens filed a reply.

²¹ *Id.* at 19376 ¶ 5.

²² Application for Review at 4-5.

²³ See 47 C.F.R. § 1.115(c) (2001). Even if we were to treat Havens's Application for Review as a petition for reconsideration, Havens would be precluded from raising the issue for failure to explain why the issue could not have been raised earlier or why the public interest requires that it be considered now. See 47 C.F.R. § 1.106(c) (2001). Moreover, filing an informal objection at an earlier stage of a proceeding does not confer standing to later file a petition for reconsideration. See *Redwood Microwave Association, Inc., Memorandum Opinion and Order*, 61 FCC 2d 442, 443 ¶ 3 (1976).

²⁴ By contrast, Havens states that the informal request was submitted on June 6, 2001. See Application for Review at 4-5. The application for review fails to explain the discrepancy between the date our records indicate the informal request was submitted and the date alleged by Havens.

²⁵ 47 C.F.R. § 1.106(b)(1) (2001).

spectrum, and that he is “suffering serious losses” by alleged “impermissible” Bureau actions.²⁶ Havens also argues that he could not participate earlier in the proceeding because as a very small business, he needed more than thirty days to complete the engineering studies that formed the basis of his petition for reconsideration.²⁷ We do not find this argument to be persuasive. Assuming *arguendo* that Havens needed time beyond the thirty-day petition to deny filing period to complete an engineering study to demonstrate whether Call Sign WRV374 was in compliance with the service coverage requirement,²⁸ he fails to explain why he could not have timely filed a petition to deny concerning his other points of contention, *i.e.*, whether Regionet commenced service by the station construction deadlines and whether it made unauthorized major modifications.²⁹ Instead of filing a timely petition to deny concerning these points or, in the alternative, requesting an extension of time to file a petition to deny on all points of contention, Havens elected to allow the filing period for petitions to deny to lapse. As a result, Havens failed to raise any arguments opposing the subject renewal application until after the filing period for petitions to deny had expired.

10. Havens argues that the Division erred in not addressing an argument in his petition for reconsideration that such petition was procedurally valid under Section 1.106(c)(2) of the Commission’s Rules.³⁰ Havens’s reliance on Section 1.106(c) in the instant matter is misplaced. Section 1.106(c) does not relate to who may file a petition for reconsideration; that is the subject of Section 1.106(b)(1).³¹ Rather, Section 1.106(c) addresses the circumstances under which an otherwise proper petition for reconsideration may rely on facts not previously presented. That Section 1.106(c)(2) permits such facts to be raised when “consideration of the facts relied on is required in the public interest” does not in any way affect or provide relief from the requirement in Section 1.106(b)(1) that a person seeking reconsideration of Commission action must either already be a party to the proceeding or explain why earlier participation was not possible.³²

11. Finally, in further support of his standing argument, Havens cites to a January 3, 2001 action by the Division’s Policy and Rules Branch³³ granting Regionet an extension of time to file an opposition

²⁶ Application for Review at 3-4.

²⁷ Application for Review at 7.

²⁸ 47 C.F.R. § 80.475 (2001).

²⁹ Application for Review at 5. Commission sign-out records indicate that at the commencement of the thirty-day period for filing a petition to deny the renewal application of Call Sign WRV374, Havens had at his disposal the information (applications, attachments, licenses, activation letters, waivers, etc.) regarding Call Sign WRV374 that would eventually be used to support his non-engineering study arguments, *i.e.*, whether Regionet commenced service by the station construction deadlines and whether it made unauthorized major modifications.

³⁰ *Id.* at 8. See 47 C.F.R. § 1.106(c)(2).

³¹ See 47 C.F.R. § 1.106(b)(1).

³² Compare 47 C.F.R. § 1.106(b)(1) with 47 C.F.R. § 1.106(c)(2). Contrary to what Havens contends, the two cases that he attaches as exhibits to his application for review are not analogous to his case and do not support his Section 1.106(c) argument. See Application for Review at 8. In contrast to the instant case, both of the attached cases involve petitioners that were a party to their particular proceeding prior to filing their reconsideration petition and thus in compliance with 47 C.F.R. § 1.106(b). In the Elliott J. Greenwald, Esq., *Letter*, 13 FCC Rcd 7132 (OGC 1998), the petitioner sought reconsideration of the dismissal of his complaint that another party had violated the Commission’s *ex parte* rules. In Complaint of Northwest Indiana Public Broadcasting, Inc., *Memorandum Opinion and Order*, 13 FCC Rcd 12805 (CSB 1998), the petitioner sought reconsideration of the denial of its must-carry complaint against another entity. As indicated, in the instant case, Havens never filed a petition to deny against the renewal application and thus was not a party to the proceeding prior to filing the reconsideration petition.

³³ Letter from Scot Stone, Federal Communications Commission, to Martin. W. Bercovici, Keller and Heckman LLP (Jan. 3, 2001).

to his petition for reconsideration of the dismissal of his applications to serve a portion of the Arkansas River.³⁴ Havens argues that that action set a precedent of providing standing to an entity that theretofore had not been a party to the proceeding. We note however that the subject Application for Review represents the first time in this proceeding that Havens has made this particular argument.³⁵ Because Havens failed to raise this argument previously in his petition for reconsideration, and in the absence of a waiver to the same, we decline, pursuant to Section 1.115(c) of the Commission's Rules, to consider the merits of this argument at this juncture.³⁶

12. Because it is in the public interest that all interested parties raise their arguments concerning an application in the earliest stages of a proceeding, parties seeking reconsideration, who did not raise their arguments until after final action has been taken, must explain why they could not have participated earlier in the proceeding.³⁷ As noted above, Havens has not provided a creditable explanation to satisfy this requirement. Because of this procedural defect in his petition for reconsideration, we affirm the Division's finding that Havens lacks standing now to challenge the grant of the renewal of the captioned license.³⁸ Therefore, we conclude that the petition was properly dismissed.

13. Accordingly, IT IS ORDERED pursuant to Sections 4(i), 5(c)(5), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c)(5), 303(r), and Section 1.115 of the Commission's Rules, 47 C.F.R. § 1.115 (2001), the Application for Review filed by Warren C. Havens on December 3, 2001, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

³⁴ Application for Review at 8-9. Havens argues that the grant of the extension request to file an opposition was not allowed under either 47 C.F.R. §§ 1.106(b)(1) or (c). Havens misinterprets these rules. Neither rule relates to the procedural viability or timeliness of an opposition filing.

³⁵ See n.20, *supra*. Havens has raised this argument in at least one other proceeding. See Regionet Wireless Licensee, LLC, *Order on Further Reconsideration*, 16 FCC Rcd 22097, 22098-99 ¶ 5 (WTB PSPWD 2001). The Division stated there that allowing Regionet a brief extension of time to file an opposition in one proceeding cannot be used to bolster the procedural validity of Havens's petition for reconsideration in another proceeding. *Id.* It noted that the issues are unrelated because the Commission places greater procedural demands on a party that files a petition for reconsideration, which challenges a specific Commission action, than on a party that files an opposition thereto, which is merely a responsive pleading. *Id.*

³⁶ See n.20, *supra*.

³⁷ See Algreg Cellular Engineering, et al., *Memorandum Opinion and Order and Order on Reconsideration*, 14 FCC Rcd 18524, 18536-37 ¶ 19 (1999).

³⁸ See Sagir, Inc., *Memorandum Opinion and Order*, 16 FCC Rcd 8159 (2001); Gap Cellular, L.C., *Order*, 15 FCC Rcd 4540 (WTB CWD 2000); Bravo Cellular, *Order*, 15 FCC Rcd 4517 (WTB CWD 2000).